

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3134
Administrative Law Judge Division
May 27, 2004

R E S O L U T I O N

RESOLUTION ALJ 176-3134. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

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Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 27, 2004, the following Commissioners voting favorably thereon:

/s/ WILLIAM AHERN

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3134 (5/27/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-04-040 CALIFORNIA-AMERICAN WATER COMPANY, for an order authorizing it to increase its rates for water service in its Sacramento district to increase revenues by \$3,160.8 or 14.35% in the year 2005, by \$2,158.6 or 8.48% in the year 2006, and by \$1,202.2 or 4.35% in the year 2007. (N04-02-021)	Ratesetting	Ratesetting	YES
A04-04-041 CALIFORNIA-AMERICAN WATER COMPANY, for an order authorizing it to increase its rates for water service in its Larkfield district to increase revenues by \$494.1 or 26.16% in the year 2005, \$183.4 or 7.63% in the year 2006, and \$61.9 or 2.39% in the year 2007. (N04-02-020)	Ratesetting	Ratesetting	YES
A04-04-042 SAN DIEGO GAS & ELECTRIC COMPANY, for approval to enter into a new electric resource contract with the San Diego County Water Authority and for approval of the cost recovery and ratemaking mechanisms associated therewith.	Ratesetting	Ratesetting	NO
A04-05-003 THINK 12 CORPORATION, dba HELLO DEPOT, for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-05-004 SIERRA PACIFIC POWER COMPANY, for authority to update its Energy Cost Adjustment Clause Billing Factors effective October 1, 2004.	Ratesetting	Ratesetting	YES
A04-05-005 PACIFIC GAS AND ELECTRIC COMPANY, [Annual Earnings Assessment Proceeding], for approval of energy efficiency shareholder incentives for fourth claim for incentives for accomplishments for the 1994 programs, the third claim for incentives for 1999 accomplishments for pre-1998 programs, and for recovery of costs for the interruptible load programs.	Ratesetting	Ratesetting	YES

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3134 (5/27/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-05-006 SUREWEST COMMUNICATIONS, SUREWEST COMMUNICATIONS, INC., SUREWEST LONG DISTANCE, SUREWEST TELEPHONE, SUREWEST TELEVIDEO, WEST COAST PCS LLC, for approval of SureWest Communications, a California corporation, reincorporated as SureWest Communications, Inc., a Delaware corporation.	Ratesetting	Ratesetting	NO
A04-05-007 WORLDNET GROUP TELECOM, INC., for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-05-008 SOUTHERN CALIFORNIA GAS COMPANY (U 904-G), for Authority to increase its Gas Revenue Requirements to reflect its Accomplishments for Demand-Side Management Program Year 1994 and 1997 and Low-Income Program Years 2002 and 2003 in the 2004 Annual Earnings Assessment Proceeding (AEAP).	Ratesetting	Ratesetting	YES
A04-05-009 EAGLE BROADBAND, INC., a Texas Corporation, for a Certificate of Public Convenience and Necessity to provide Limited Facilities-Based and Resold Competitive Local Exchange and Interexchange Services.	Ratesetting	Ratesetting	NO
A04-05-010 SAN DIEGO GAS & ELECTRIC COMPANY, for approval of incentives associated with its accomplishments for Demand-Side Management Program Year 1994, Low Income Program Year 2003 and Demand Response Program Expenditures in the 2004 Annual Earnings Assessment Proceeding (AEAP).	Ratesetting	Ratesetting	YES
A04-05-011 COMMPARTNERS, LLC, for a certificate of public convenience and necessity to provide facilities-based and resold local exchange services in Pacific Bell, Verizon, Citizens Telephone Company, and Roseville Telephone Company and interexchange services statewide.	Ratesetting	Ratesetting	NO

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Resolution ALJ 176-3134 (5/27/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-05-012 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Approval of Pre-1998 Demand-Side Management Earnings and 2002 Low Income Energy Efficiency Earnings Claims, Approval of Interruptible Load Programs Memorandum Account Balances recorded in 2003, and in Support of 2003 Energy Efficiency Program Performance Achievements.	Ratesetting	Ratesetting	YES
A04-05-013 WORLDWIDE TELECOMMUNICATIONS, INC., dba WTI TELECOM, INC., for a certificate of public convenience and necessity to provide resold local exchange and interexchange services.	Ratesetting	Ratesetting	NO
A04-05-015 DEL ORO WATER CO., INC., (U 61-W), for Authority to Borrow approximately One Hundred Thousand and No/100 (\$100,000) Dollars and to issue evidence of indebtedness thereof in order to make certain capital improvements and engineering studies; and for Authority to Recover all such costs by increases in the respective water rates of customers in its Country Estates District in Bakersfield, California.	Ratesetting	Ratesetting	NO
A04-05-016 GTC TELECOM CORP., for a Certificate of Public Convenience and Necessity in order to provide Limited Facilities-based Competitive Local Exchange, Access and Interexchange Service.	Ratesetting	Ratesetting	NO
A04-05-017 WILTEL COMMUNICATIONS, LLC (U 6146-C) FKA WILLIAMS COMMUNICATIONS, LLC, to Amend its Certificate of Public Convenience and Necessity.	Ratesetting	Ratesetting	NO
A04-05-018 ALLIANCE GROUP SERVICES, INC., dba ALLIANCE COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-05-019 GLOBALPHONE CORP., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-05-021 SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), for Authorized Capital Structure, Rate of Return on Common Equity, Embedded Cost of Debt and Preferred Stock, and Overall Rate of Return for Utility Operations for 2005.	Ratesetting	Ratesetting	YES
A04-05-023 PACIFIC GAS AND ELECTRIC COMPANY, for authority to True-up its Cost of Capital for 2004 and to Establish its Authorized Cost of Capital for 2005.	Ratesetting	Ratesetting	YES
A04-05-025 PARIVASH HAFEZIZADEH, dba ATLAS TRANSPORTATION, for authority to operate as a passenger stage between the points within the County of Orange on one hand and John Wayne Airport on the other hand.	Ratesetting	Ratesetting	NO
A04-05-026 CONNECT PAGING, INC., dba GET A PHONE, for a certificate of public convenience and necessity to offer limited facilities-based local exchange, access and interexchange services.	Ratesetting	Ratesetting	NO
A04-05-027 PLANET TELESIS, INC., for a certificate of public convenience and necessity to provide limited facilities- based and resold local exchange services.	Ratesetting	Ratesetting	NO
A04-05-029 SEA PLANES, INCORPORATED VCC-85, to Amend its Certificate of Public convenience and Necessity to expand its operating authority to Catalina Island by adding a stop on its existing route so that it will be authorized to carry passengers on a scheduled service to any and all places on Catalina Island from Marina Del Rey and Avalon.	Ratesetting	Ratesetting	NO
A04-05-030 SACRAMENTO REGIONAL TRANSIT DISTRICT, for an order authorizing District to construct, maintain, and operate a light rail passenger system and Union Pacific tracks across Mine Shaft Lane in the County of Sacramento, State of California.	Ratesetting	Ratesetting	NO

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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-05-031 BCN TELECOM, INC., for a Certificate of Public Convenience and Necessity to provide Resold and Limited Facilities-based Local Exchange Telecommunications Services within California.	Ratesetting	Ratesetting	NO
A04-05-032 GLOBAL CONNECT TELECOMMUNICATION, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-05-033 MERCURY TELECOM, INC., for a Certificate of Public Convenience and Necessity to provide Resold and Limited Facilities-based Local Exchange and Interexchange Telecommunications Services within California.	Ratesetting	Ratesetting	NO
A04-05-034 REDUCED RATE LONG DISTANCE, LLC, for authority to transfer membership interest.	Ratesetting	Ratesetting	NO
A04-05-036 NETWORK ENHANCED TECHNOLOGIES, INC., for a certificate of public convenience and necessity to provide resold and limited facilities-based local exchange telecommunications services.	Ratesetting	Ratesetting	NO
A04-05-037 ONE VOICE COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO